United States Department of Labor Employees' Compensation Appeals Board

E.W., Appellant))) Declaration 20 1426
and	 Docket No. 20-1436 Issued: September 27, 2021
DEPARTMENT OF JUSTICE, U.S. PENITENTIARY, Florence, CO, Employer)))
Appearances: Appellant, pro se Office of Solicitor, for the Director	Case Submitted on the Record

ORDER DISMISSING APPEAL IN DOCKET NO. 20-1436 & DISMISSING PETITION FOR RECONSIDERATION IN DOCKET NO. 19-0963

Before:

JANICE B. ASKIN, Judge PATRICIA H. FITZGERALD, Alternate Judge VALERIE D. EVANS-HARRELL, Alternate Judge

On July 26, 2020 appellant filed an appeal from a November 2, 2018 merit decision and a purported June 30, 2020 decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards docketed the appeal as No. 20-1436.

The Board, having duly considered the matter, notes that its jurisdiction is limited to the review of final adverse OWCP decisions issued under the Federal Employees' Compensation Act (FECA).² The Board's *Rules of Procedure* provide that "Any notice of appeal must be filed within 180 days from the date of issuance of a decision of OWCP." The 180th day following the most

¹ The Board notes that the case record does not contain a June 30, 2020 decision of OWCP. The case record, however, does contain a Board order dated June 30, 2020. *Order Dismissing Appeal in Docket No. 20-0718 and Order Dismissing Petition for Reconsideration in Docket No. 19-0963* (issued June 30, 2020). To the extent that this appeal constitutes a timely petition for reconsideration of the Board's June 30, 2020 order dismissing his appeal in Docket No. 20-0718 as untimely filed, the Board will address that petition by separate order.

² 5 U.S.C. § 8149; 20 C.F.R. §§ 501.2(c) and 501.3(a).

³ *Id.* at § 501.3(e).

recent OWCP decision, which was dated November 2, 2018, was May 1, 2019. As appellant did not file an appeal with the Board until July 26, 2020, more than 180 days after the November 2, 2018 decision, the Board finds that the appeal docketed as No. 20-1436 is untimely filed. The Board is, therefore, without jurisdiction to review the appeal. Appellant has not offered a reason to explain his failure to timely file an appeal with supporting documentation sufficient to establish compelling circumstances. As there is no final adverse decision issued by OWCP within 180 days of the filing of this appeal over which the Board may properly exercise jurisdiction, the Board concludes that the appeal docketed as No. 20-1436 must be dismissed.

To the extent that this appeal constitutes a petition for reconsideration of the Board's June 30, 2020 order dismissing petition for reconsideration in Docket No. 19-0963, the Board finds that the petition for reconsideration is dismissed. In its June 30, 2020 order, Board dismissed a prior petition for reconsideration under Docket No. 19-0963 as untimely filed. There is no provision in FECA⁴ or in the Board's *Rules of Procedure*⁵ for filing a petition for reconsideration from the dismissal of a petition for reconsideration. As such, the Board concludes that it lacks jurisdiction to either grant or deny petition for reconsideration with regard to Docket No. 19-0963. Accordingly, the petition for reconsideration with regard to Docket No. 19-0963 must be dismissed.

⁴ 5 U.S.C. § 8101 et seq.

⁵ 20 C.F.R. § 501.7.

⁶ See John A. Johnson, 44 ECAB 602 (1993) (wherein the Board dismissed appellant's petition for reconsideration of a denial of a petition for reconsideration, finding no basis to file a second petition for reconsideration, pursuant to 20 C.F.R. § 501.7(a)).

IT IS HEREBY ORDERED THAT the appeal docketed as No. 20-1436 is dismissed.

IT IS FURTHER ORDERED THAT the petition for reconsideration in Docket No. 19-0963 is dismissed for lack of jurisdiction.

Issued: September 27, 2021 Washington, DC

Janice B. Askin, Judge Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge Employees' Compensation Appeals Board